

Appl. No. 10/630,119
Atty. Docket No. P140C
Customer No. 27752

REMARKS

Claims 1-9, 14-17, and 22-30 are pending in the present application.

Claims 10-13, 18-21, 31, and 32 were previously canceled. See the preliminary amendment filed July 30, 2003.

The Rejections Under 35 USC § 102(a and e)

Claims 1-9 are rejected under 35 USC § 102(a and e) as being anticipated by US Patent 6,180,131 to Sunvold et al. ("Sunvold").

The Examiner asserts that the Claims are directed to a method of limiting weight gain in a cat by feeding said cat a pet food comprising a protein source, a source of fat, and a source of carbohydrate from a grain.

The Examiner asserts that Sunvold teaches a method of feeding pets such as cats a diet having a pet food composition having a source of protein, a source of fat, and a carbohydrate grain source. The Examiner asserts that the food promotes satiety thereby promoting a voluntary decrease in food intake, the carbohydrate source includes corn grits, the protein source includes chicken, and the fat includes chicken fat. The Examiner asserts that it would be inherent that a cat population includes males. Therefore, the Examiner asserts that food would be provided and consumed according to the method and that the disclosure renders the claims anticipated.

The Applicant respectfully traverses this rejection based on the remarks contained herein. Under § 102, anticipation requires that all the Claim elements appear in a single prior art document. "A Claim is anticipated only if each and every element set forth in the Claim is found, either expressly or inherently described, in a single prior art reference." MPEP § 2131 citing *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2D 1051, 1053 (Fed. Cir. 1987). "The Identical invention must be shown in as complete detail as is contained in the ... Claim." MPEP § 2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2D 1913, 1920 (Fed. Cir. 1989).

The Examiner misstates Claim 1. Claim 1 does not recite a source of carbohydrate from "a grain". Claim 1 specifically recites that the pet food composition has a source of carbohydrates from a grain source *that excludes rice*.

Nowhere in Sunvold is there any distinction made between different sources of carbohydrate. Sunvold is concerned only with different types of fibers, and the effects on dogs of fibers of differing fermentability. There is no discussion whatsoever in Sunvold regarding carbohydrate sources.

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The Examiner cites Table 3 for disclosing carbohydrates, including corn grits. However, Table 3 also discloses brewer's rice. Therefore, it is clear that Sunvold does not disclose a diet that excludes rice – rice is specifically included in one of the diets exemplified in Sunvold.

With respect to male cats, regardless of whether a population of cats includes male cats, Sunvold does not disclose a carbohydrate source that excludes rice.

Therefore, the present invention cannot be anticipated by this reference. Because Sunvold does not disclose each and every element of the present application, namely a source of carbohydrates *from a grain source that excludes rice*, it cannot as a matter of law anticipate the present application. Reconsideration and withdrawal of the rejection are requested.

Rejection Under 35 USC 103(a)

Claims 5 and 10-32 are rejected under 35 USC 103(a) as being unpatentable over the combined disclosures of Sunvold in view of US Patent 5,894,029 to Brown et al. (hereinafter "Brown").

The Examiner asserts that the claims in question are drawn to a process of feeding a male cat a feed composition comprising protein, fat, and a carbohydrate source having a mixture of corn, sorghum, barley, and oats, and that the feed promotes satiety and increases postprandial blood glucose and insulin response.

The Examiner acknowledges that Sunvold does not disclose the use of sorghum or barley. However, the Examiner asserts that the inclusion of grain mixtures and blends into pet foods is within the level of skill in the art based on Brown.

The Examiner asserts that it would have been within the level of skill in the art to include corn, oats, sorghum, and barley to the food product of Sunvold.

In addition, with respect to the Claims reciting specific ratios and percentages, the Examiner asserts that the ratios and percentages do not impart patentability to the Claims. The Examiner asserts that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation, citing *In re Aller*.

The Examiner acknowledges that the cited documents do not disclose the various concentrations of active ingredients. However, the Examiner asserts that preparation of compositions having various amounts of active is within the level of one having ordinary skill in the art, and that the mere selection of proportions and ranges is not patentable absent a showing of criticality, citing *In re Russell*.

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The Examiner asserts that the sex of the cat does not impart patentability to the Claims.

Thus, the Examiner asserts that it would have been obvious to combine the grain blend of Brown into the feeding method of Sunvold to result in the present invention.

The Applicant respectfully traverses the rejections. The Examiner has not met the burden of establishing a *prima facie* case of obviousness. See MPEP § 2143.01. In order for a *prima facie* case of obviousness to be established, three criteria must be met. First, there must be some suggestion or motivation, i.e. desirability, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all of the claim limitations.

Independent Claims 1 and 22 both recite a source of carbohydrate from a grain source *that excludes rice*. All of the rejected Claims depend from either Claim 1 or Claim 22. As discussed above, Sunvold does not teach or suggest any particular source of carbohydrates, nor disclose or recognize any importance for any particular source of carbohydrate versus any other source. Thus, there is no motivation in Sunvold to seek out particular blends or sources of carbohydrate. Nor, therefore, is there any expectation of success for any purpose with respect to one source of carbohydrate versus another. Sunvold only discusses the effects of different types of fermentable fiber on dogs. Thus, there is no teaching or suggestion in Sunvold to even consider using one source of carbohydrate versus another in cats. Finally, Sunvold does not teach each and every element of the Claims, namely, a carbohydrate source that excludes rice.

Brown also does not teach, suggest, or recognize any importance for any particular source of carbohydrate versus any other source. In the listing of carbohydrate sources cited by the Examiner, Column 2, lines 34-52, rice is listed as a source of farinaceous material useful in the compositions of Brown. In addition, rice flour is listed as a possible farinaceous material at Column 3, line 1. Rice flour is disclosed again at Column 3, lines 10 and 12. Therefore, Brown provides no teaching or suggestion to exclude rice or rice products from the pet snack. Brown also does not discuss satiety, or improved glucose metabolism. Thus, there is no expectation of success for any purpose with respect to one source of carbohydrate versus another. Finally Brown does not teach each and every element of the Claims, namely, a carbohydrate source that excludes rice.

In particular, with respect to the Examiner's assertion #7 regarding including mixtures and blends of carbohydrate sources in pet foods, although various grain mixtures are included in Brown, the Claims recite a carbohydrate source from a grain source that excludes rice. Brown does not

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disclose or provide any reason for excluding rice or any other grain source. Therefore, while it may be known that grain sources can be included in pet snacks, the exclusion of particular sources of carbohydrate is not taught or suggested by either Sunvold or Brown.

With respect to #8, regarding including various carbohydrate blends, again, there is no teaching or suggestion in either Sunvold or Brown to exclude any particular source of carbohydrate.

With respect to # 9, regarding recitation of specific ratios and percentages, the Examiner asserts that the composition of Sunvold would promote satiety and inherently treat postprandial conditions because it contains each of the elements of the instant Claims. The Examiner asserts that the general conditions of the Claims are disclosed in the cited documents, and that the Applicant has merely discovered optimum or workable ranges by routine experimentation.

Sunvold does not disclose the general conditions of the Claims, nor contain each element of the Claims, namely the exclusion of rice. The Applicant has noted particular differences in satiety and postprandial response depending on the carbohydrate source, and has selected a particular source of carbohydrate. Therefore, the Applicant is not merely discovering optimum or workable ranges.

With respect to #10, regarding concentration of ingredients and a showing of criticality, the Applicant is selecting and reciting particular sources of carbohydrate, then reciting proportions and ranges. Neither cited document discloses or discusses any differences between sources of carbohydrate, or any reason to choose one source versus another. Therefore, the Applicant is not merely selecting proportions and ranges.

With respect to #11 and the sex of the cat, the cited documents do not disclose the same process providing the same composition to the same species of animal. The methods of the present invention and those of the cited documents do not provide the same results, particularly satiety and improved glucose metabolism. The present invention specifically excludes sources of carbohydrate from rice. The Applicant has recognized a difference between various sources of carbohydrate, and specifically excludes rice in order to achieve the claimed limitation in weight gain, promotion of satiety, and decrease in postprandial blood glucose and insulin response. The Applicant particularly recites a low glycemic index grain source, and excludes rice. Therefore, the compositions of the present invention and the cited documents are not the same and specifically do not provide the same results.

Assuming *arguendo* that one having ordinary skill in the art would combine the disclosures of Sunvold and Brown, one would still fall short of the of Applicant's claimed invention, arriving

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perhaps at a pet snack with increased fermentable fiber. One would not arrive at methods or compositions that utilize a source of carbohydrate from a grain source that excludes rice.

Accordingly, the Claims are non-obvious over the cited documents. Reconsideration and withdrawal of the rejection on this basis are requested.

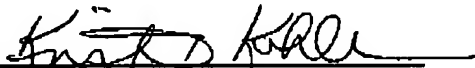
Conclusion

In light of the remarks presented herein, the Applicant respectfully requests reconsideration and allowance of the Claims. In the event that issues remain prior to allowance of the noted claims, then the Examiner is invited to call the Applicant's undersigned attorney for further discussion.

Respectfully Submitted,

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March 21, 2007

Customer No. 27752